

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 349 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COOMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FERTILIZERS CO. LTD.

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Appearance:

MR B.B.Naik for Mr. MANISH R BHATT for Petitioner  
MR Manish Shah for Mr. JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 01/05/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal,  
Ahmedabad has referred the following question for the  
opinion of this Court under section 256(1) of the  
Income-tax Act, 1961.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that notwithstanding the provisions of section 43A(2), the assessee was entitled to development rebate in respect of the increase in the cost of assets on account of realignment of currency ?"

2. The matter pertains to the assessment years 1974-75 and 1976-77. The assessee had paid additional amounts of Rs. 23,26,965/- and Rs. 12,10,357/- for these two assessment years respectively to M/s. Hitachi Ship Building Engineering Co.Ltd., Japan by way of additional liability on account of fluctuation in the exchange rate. The claim of the assessee for treating this amount as revenue expenditure was rejected by the ITO. The CIT (Appeals) however, allowed the same as revenue expenditure. The Tribunal while accepting the contention of the revenue that this was not a revenue expenditure upheld the alternative contention raised by the assessee, that the assessee was entitled to development rebate treating the said expenditure to be capital expenditure. The Tribunal in the process was following the decision of this Court in The Arvind Mills Ltd. vs. CIT, reported in 112 ITR, 64.

3. In The Arvind Mills Ltd. (Supra), this Court came to the conclusion that the additional liability in respect of the repayment of loan borrowed by the assessee for acquiring imported machinery during the relevant previous year which was incurred as an integral part of the original transaction can legitimately be taken into enhancing the cost of the machinery purchased and it should, therefore, be taken into consideration in determining the actual cost of such machinery to the assessee for the purpose of allowing development rebate under section 33. It was held that there was no need to resort to section 43A(1) and the proviso to section 43A(2) which laid down that the provision of sub-section (1) of section 43A shall not be taken into account in computing actual cost of an asset for the purpose of deduction on account of development rebate under section 33, cannot therefore, be pressed into service to deny to the assessee the benefit which was available to it under section 33 itself. The decision of this Court in The Arvind Mills Ltd. (Supra) was challenged before the Supreme Court and has been reversed by the decision of the Hon'ble Supreme Court in the case of CIT vs. The Arvind Mills Ltd. reported in 193 ITR, 255 in which while construing the provisions of section 43A, the

Supreme Court held that once sub-section (1) of section 43A is attracted, its application qua development rebate was excluded by virtue of the provisions of sub-section (2) thereof. It was held that the language of this provision was perfectly clear and it was the requirement of the statute that for the purpose of development rebate any increase or decrease in the actual cost as a consequence of fluctuation in exchange rate should not be taken into account. It was held that in face of the language of section 43A(2) it would not be right to permit the assessee to claim development rebate on the increased cost. Applying the ratio of the decision of the Hon'ble Supreme Court in CIT vs. The Arvind Mills Ltd., 193 ITR, 255, to the present case, we hold that the Tribunal committed an error in coming to the conclusion that notwithstanding the provisions of section 43A(2), the assessee was entitled to development rebate in respect of the increase in the cost of the assets on account of realignment of currency. The question referred to us is therefore, answered in the negative in favour of the revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

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